

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HOWARD COSTA, JR.,)
Appellant,)
vs.)
THE BOARD OF DIRECTORS OF)
THE PUGET SOUND AIR)
POLLUTION CONTROL AGENCY,)
Respondent.)

PCHB No. 169

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of the denial by respondent of appellant's application for a variance from the open burning provisions of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a formal hearing in respondent's Seattle offices at 1:30 p.m., November 17, 1972.

Appellant appeared and presented his own case. Respondent appeared through its counsel, Keith D. McGoffin. Evan Aaron, Seattle court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
5 and Order which were submitted to the appellant and respondent on
6 February 22, 1973. No objections or exceptions to the Proposed
7 Findings, Conclusions and Order having been received, the Pollution
8 Control Hearings Board makes and enters the following

9 FINDINGS OF FACT

10 I.

11 Appellant owns slightly less than one acre of land at 604 - 104th
12 Place Southeast, Everett, Snohomish County. The property, included in
13 a recent annexation, is three blocks inside the Everett city limit. T
14 population density of appellant's area is more than two thousand per
15 square mile as evidenced by a United States Census Bureau tract map.

16 II.

17 Early in 1972, appellant began a clearing operation on his property
18 and felled brush and deciduous trees. He sought a natural vegetation
19 burning permit from the Everett Fire Department and was informed he first
20 would have to obtain a variance from respondent. After extensive
21 research, appellant prepared an eleven page brief which he filed with
22 respondent; the brief (Respondent's Exhibit 3) attacked respondent's
23 ban on residential clearing natural vegetation fires as an unnecessary
24 deprivation of private property rights, and contended that appellant
25 should be granted a variance because outdoor burning was permitted close
26 to his home in a rural area south of the nearby Everett city limit. On

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 August 9, 1972, at a public hearing in Tacoma, the Board of Directors
2 of Puget Sound Air Pollution Control Agency denied appellant's variance
3 application (Respondent's Exhibits 12, 13 and 17). That denial is the
4 subject of this appeal.

5 III.

6 Section 7.01 of respondent's Regulation I sets two conditions which
7 respondent must find before granting a variance: (1) the proposed
8 emission will not endanger public health or safety, and (2) failure to
9 grant the variance would produce "serious hardship without equal or
10 greater benefits to the public." Section 9.02 of respondent's Regulation
11 I makes it unlawful to cause any outdoor fire in a restricted area with a
12 general population density of two thousand or more persons per square
13 mile as evidenced by United States Census Bureau tract map.

14 IV.

15 The Everett Disposal Site, about seven miles from appellant's
16 property, is available without charge for him to use for disposal of
17 his cleared natural vegetation. It would cost appellant from \$100.00
18 to \$400.00 to haul his waste material to the disposal site.

19 V.

20 Brush chippers, renting from \$20.00 to \$35.00 a day also are
21 available to appellant, but they could not handle the larger stumps
22 which still would have to be hauled to the site.

23 VI.

24 Respondent and City of Everett officials agreed in 1971 to authorize
25 no outdoor vegetative fires in that city. As a result of that agreement,
26 no permits for outdoor vegetative fires have been issued by the Everett

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Fire Department since October, 1971.

2 From these Findings, the Pollution Control Hearings Board
3 comes to these

4 CONCLUSIONS

5 I.

6 Appellant's property is within the Everett city limit and, thus,
7 is subject to the carefully considered agreement by the Everett Fire
8 Department and Puget Sound Air Pollution Control Agency that the
9 objectives of clean air and municipal fire protection both will be
10 served better by granting no permits for outdoor natural vegetation
11 fires within the corporate confines of the City of Everett. Appellant
12 has researched this matter diligently and made a courteous and
13 forceful presentation of his case to this Board. But he cannot
14 escape the fact that his property lies within the Everett city limits.

15 II.

16 This fact forces attention on the two reasons (Proposed Findings
17 of Fact III) which respondent must find before granting a variance
18 from its rules and regulations, and the relation of those two reasons
19 to the agreement between the Everett Fire Department and the Puget
20 Sound Air Pollution Control Agency. Respondent, after a public
21 hearing, was unable to find either reason in appellant's favor. It
22 was in the position of having to find that "public safety" was
23 endangered because the requested variance would have negated a fire
24 protection agreement in effect between the Everett Fire Department
25 and Puget Sound Air Pollution Control Agency since October, 1971.
26 And respondent found that appellant, because of the availability to

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 him of alternate means of disposal, was not subject to "serious
2 hardship without equal or greater benefits to the public."

3 III.

4 In this denial of appellant's request for a variance, respondent
5 acted in accordance with its rules and regulations and not in an
6 arbitrary or capricious manner.

7 Therefore, the Pollution Control Hearings Board makes this

8 ORDER

9 The action on August 9, 1972 of the Board of Directors of the
10 Puget Sound Air Pollution Control Agency in denying an outdoor
11 vegetation burning variance to appellant is sustained.

12 DONE at Olympia, Washington this 3rd day of April, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman
16

17
18 W. A. GISSBERG, Member

19
20 James T. Sheehy
21 JAMES T. SHEEHY, Member

22 Mr. Gissberg, not having participated in this case, did not sign
23 the Order.

24
25
26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER